IN THE HIGH COURT OF JUDICAUTRE AT BOMBAY

CIVIL APPELLATE JURISDCITION

WRIT PETITION NO. 1770 OF 1998

M. Venugopalan,
Aged 47 years, Indian Citizen,
Son of Shri. (Late) T.O. Numbiar,
residing at "Vini Villa"
House No. 826, Survey No. 52,
Dhanori, Pune 411 015. ... Petitioner

Versus

1. The Union of India,
through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi 110 011.

2. The Administrative Commandant,
Station Headquarters,
Aundh/Kirkee,
Pune 411 003.

3. The Commander,
Headquarters, Poona Sub Area,
Pune 411 001.

4. The Adjutant General,
Army Headquaretrs,
Staff Duty Directorate,
6-B, New Delhi 110 064.

5. The Controller,
Controllerate of Defence Accounts,
Southern Command,
Pune 411 001. ... Respondents

Mr. S.P. Saxena for Petitioner.

Mr. Suresh Kumar for Respondent Nos. 1 to 5.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : FEBRUARY 10, 2005

ORAL JUDGMENT (Per F.I. Rebello,J.)

1. The matter was adjourned today to enable the Respondents in terms of the statement by their

learned counsel and more particularly in view of the documents filed by the petitioner from Pages 198 onwards to find out as to whether the post of Sanitary Supervisor was existing. The Respondents have been unable to show that the said post was not existing.

2. A few facts may now be set out.

. The Petitioner who was in service of the Respondents was promoted as Sanitary Inspector on 25.5.1978. It is the case of the Petitioner that the next promotional post for a Sanitary Inspector is that of Sanitary Supervisor. One Shri. S.R. Bhosale holding the said post retired on superannuation on 28.2.1981. The departmental promotion committee thereafter came to be constituted on 4.5.1981. It is the case of the Petitioner that the post of Sanitary Supervisor is also called as Sanitary Superintendent or Sanitary Assistant by Respondent No. 4. On 10.6.1981 promotion order was published by Respondent No. 2 promoting the petitioner to the post of Sanitary Supervisor with effect from 1.5.1981. On 6.7.1981 proposal of pay fixation of petitioner in the scale of Rs.425-640 of Sanitary Supervisor was sent by Respondent No. 2 to Respondent No. 5. The

Petitioner was holding the post of Sanitary Supervisor with effect from 1.5.1981 and discharging duties of Sanitary Supervisor. Correspondence was exchanged with the department and subsequent to that the pay fixation to the post of Sanitary Supervisor for the Petitioner was rejected. Aggrieved petitioner preferred Original Application No. 966 of 1992 before the CAT. That came to be dismissed on 26.9.1997.

3. C.A.T. while dismissing the O.A. recorded a finding that there was no sanctioned post of Sanitary Supervisor in existence and that the post of Sanitary Supervisor had been converted to permanent one for the limited purpose of giving pensionary benefits to the previous incumbent after his retirement. The Tribunal addressed itself to the question whether in the absence of sanction for the post, whether the tribunal could direct promotion to the applicant before it to the non-existent post. It answered the same against the applicant and for these reasons that O.A. came tobe dismissed.

4. At the hearing of this petition, on behalf of the petitioner, the learned counsel submits that the finding of CAT that there was no post of

Sanitary Supervisor is totally perverse as it has ignored the material which was available in the form of documentary evidence. Had that material been considered, the learned tribunal would have come to the conclusion that the post subsists. It is then pointed out that earlier there were recruitment rules in force of the year 1952 though these were not rules framed under article 309. None the less these were the rules which were framed pursuant to the executive power of the State and would be binding till such time the rules were made under Article 309. Then came the Rules of 1980. These rules included the posts of General Supervisor, Accounts Clerk and Store-keeper. It is submitted that considering rule 2 of the 1980 rules, these rules only applied to the post set out therein and would not apply to post which were in existence and not governed by the said rules. In fact it is pointed out before the rules of 1980 which were made in the exercise of powers under article 309, there was the earlier CPRO No. 669 of 1952. That shows various posts under Item No. 3 including the post of Supervisors and Inspectors, in so far as Sanitary staff is concerned. In terms of that CPRO various posts set out therein, were being filled in. It is therefore, submitted that merely because thereafter rules were notified under

article 309 on 3.4.1980 in so far as three posts therein would not mean that other posts listed in CPRO 669 of 1952 stand abolished. It is submitted that a proper construction would be that in so far recruitment to the posts set out in the rules of 1980 would be governed by these rules and all other posts as set out in CPRO of 669 of 1952 would continue to be filled in the manner and procedure as earlier being done. It is submitted that it is nobody's case that all these posts set out in CPRO No. 669 of 1952 have been abolished. In support, learned counsel points out, that there is documentary evidence right from the year 1981 to show that as and upto 1991 before the O.A. was filed, there were in existence the post of Sanitary Supervisor. It is submitted that contention on behalf of the Respondent that there were no posts against which the Petitioner could be appointed is based on no material. The order of the Tribunal which accepted the contention of the Respondents, therefore, is liable tobe set aside and the Petitioner is liable to be given promotion to the post of Sanitary Supervisor. The Petitioner was selected by DPC according to his case and promotion order published on 10.6.1981. He has filed O.A.

only in the year 1992.

5. Considering the above, the question that has to be decided is whether the impugned order of CAT discloses any error of law apparent on the face of record.

. In the instant case, admittedly the tribunal itself has recorded a finding that the DPC was duly convened. In other words the constitution of D.P.C. was proper and it was made for consideration for selection to the post of Sanitary Supervisor. The Petitioner was duly selected. Considering these findings we will now examine as to whether the petitioner is entitled to the reliefs which he has sought. Firstly there is documentary evidence in the form of extract from the orders issued from time to time which were annexures to the O.A. which will show the existence of the post of Sanitary Supervisor which in some stations are also known as Sanitary Superintendent. These office orders are also annexed to the petition at least upto the year 1991-92. They deal with the authorisation of the staff. These documents therefore, show that when the DPC met on 4.5.1981 after retirement of Mr. S.R. Bhosale there was a post of Sanmitory Supervisor available for being filled in. The petitioner had been selected by duly constituted

departmental promotion committee for the post.

. We may now deal with the argument where it was sought tobe contended, that it is the rules of 1980 which are applicable and as the post of Sanitary Supervisor are not set out in the said rules, the post of Sanitary Supervisor was not existing when these rules were notified on the official gazette on 26.4.1982. The rules which were gazetted admittedly contain only three posts and not all the posts in existence in the sanitary department. For that purpose we will have to consider the CPRO 669 of 1952 which shows various posts of Sanitary staff, which includes supervisors. It will therefore, be clear that these are the posts existing in the department and in so far as these posts are concerned, no recruitment rules have been framed under Article 309 except to the extent to the posts set out in the rules of 1980. The promotion to these posts where promotional avenue is available would be based on instructions as available and it could be filed by the respondent in the same manner when Mr. Bhosale was promoted to the post of Sanitary Supervisor.

6. Once that be the case, it is clear that there is in existence the post of Sanitary Supervisor.

Once this finding is recorded the finding of CAT has to be is set aside. As the selection was by a regularly constituted Department Promotion Committee, the consequence must follow that the petitioner herein was duly selected by Department Promotion Committee for promotion to the post of Sanitary Supervisor. Once he was selected and inspite of selection and order of promotion he was not posted or paid, the Petitioner cannot be denied benefits of the said post. The Petitioner will be entitled to the relief as modified. Though the D.P.C. met in the year 1981, and the order of promoton was issued, the petitioner filed his application only in the year 1997. To that extent the relief will have to be considered. In the light of that the following order :

(1) The impugned order of CAT dated 26i.9.1991 is set aside. It is held that the petitioner was properly promoted to the post of Sanitary Supervisor by order dated 10.6.1981.

(2) The Respondents to place the petitioner in the promotional pay scale as on 10.6.1981 and further give benefits to which he will be entitled to till his compulsory retirement.

(3) The monetary benefits however, would be payable as under :

. The O.A. was filed on 21.10.1992. The petitioner would be entitled to monetary benefit from 21.10.1989 till the date of his compulsory retirement.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)